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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) CH919990037	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>May 8, 2006</u> Signature <u><i>Anne Vachon Dougherty</i></u> Typed or printed name <u>Anne Vachon Dougherty</u> Faxed to <u>(571) 273-8300</u>		Application Number <u>09/873,454</u> Filed <u>06/04/2001</u> First Named Inventor <u>F. Metin</u> Art Unit <u>2665</u> Examiner <u>Cynthia Davis</u>	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>30,374</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u><i>Anne Vachon Dougherty</i></u> Signature <u>Anne Vachon Dougherty</u> Typed or printed name <u>(914) 962-5910</u> Telephone number <u>May 8, 2006</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input checked="" type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Serial Number 09/873,454

The Examiner has finally rejected Claims 1, 4-10, 11, 13 and 16-18 under 35 USC 103 as unpatentable over Yuasa in view of Arora; and, Claims 2, 12, 14-15 and 19-20 as unpatentable over Yuasa in view of Arora and further in view of Aimoto. The present application teaches and claims a system and method for providing switching in Ethernet networks whereby a switch in the network dynamically assigns hosts to logical groups of hosts for a requested session, such that the hosts participating in the data communication session are assigned to the same group. The switch associates each group with a service class indicative of requirements for forwarding data across the switch for data communications between hosts of the group during the session. The switch forwards received data across the switch in a manner dependent on the service class of the group. During operation, the switch also monitors traffic congestion and, if required based on the traffic congestion, the switch disables communications between hosts of at least one of the groups in order to satisfy the forwarding requirements for at least one service class.

The Yuasa patent teaches a virtual LAN system wherein virtual groups are formed based on elements having physical or logical attributes in common, as expressly taught in Col. 8 at lines 64-65. Traffic is then allocated in traffic bands to the groups, as taught in Col. 19 at lines 19-24, for example, if the grouped elements have attributes consistent with the communication of video information, the virtual group be given higher priority than another virtual group which is simply exchanging text messages.

With specific reference to the claim language, Applicants submit that Yuasa does not teach the step or means at a switch for dynamically assigning hosts to logical groups of hosts for a session in response to a session request such that the hosts participating in a data communication are assigned to the same

Serial Number 09/873,454

group. Yuasa teaches a static assignment of entities to virtual groups based on attributes, as opposed to the claimed step of assigning hosts to a logical group of hosts based on a communication session request. Further, under Yuasa, the assignment is done by integrated network service equipment at a center node (see: Col. 13, lines 61-62, Col. 14, lines 18-23) and is not done by the switch. Under Yuasa, the grouping is not updated unless there are physical changes to the network. The virtual group assignment information is distributed throughout the network so that network components (e.g., LAN switches) maintain virtual group routing tables (e.g., Col. 20, lines 13-14). Further, as earlier argued, the Yuasa group assignment based on attributes is static for the life of a given network configuration. The Yuasa group assignment is not done for each communication session, as is expressly claimed.

Yuasa does not teach or suggest the claimed means and step for the network switch to associate each group with a service class indicative of requirements for forwarding data across the switch for data communications between hosts in the group during the session and to forward received data across the switch in a manner dependent on the service class of the group to which hosts participating in the data communication are assigned. Yuasa states, at Col. 8, line 66 through Col. 9, line 2, that a client address and priority are set in a virtual group registration table. Yuasa does not teach that a switch associates a group with a service class for communications during the one session, as is claimed. Further, the cited Yuasa teaching at Col. 9, lines 1-2 discloses "allocating unicast and broadcast traffic bands in group units." There is nothing in the citation which teaches/suggests forwarding received data across the switch in a manner dependent on the service class assigned.

Yuasa does not teach or suggest the claimed traffic monitoring and disabling of communications between hosts in one

Serial Number 09/873,454

or more groups to satisfy forwarding requirements of at least one service class. What Yuasa teaches in the cited Col. 19 passage (lines 25-29) is that the timing interval for scanning packets for lower priority groups is longer than the timing interval for higher priority groups. Yuasa does not teach or suggest monitoring of traffic. Further, Yuasa does not teach or suggest disabling communications. The Examiner concluded that "[i]f conditions are congested, which would be discovered by the priority scheme of Yuasa, lower priority communications will be disabled". However, Applicants contend that the Yuasa teachings do not support that conclusion. The Federal Circuit has stated that when patentability turns on the question of obviousness, the obviousness determination "must be based on objective evidence of record" and "cannot be dispensed with." (In re Lee, 277 F. 3d 1338, 1343 (Fed. Cir. 2002)). Moreover, the Federal Circuit has stated that "conclusory statements" by an examiner fail to adequately address the factual question of motivation, which is material to patentability and cannot be resolved "on subjective belief and unknown authority" (Id. at 1343-1344). Clearly, therefore, since Yuasa does not teach or suggest monitoring of traffic, the Examiner cannot conclude that Yuasa monitors traffic or disables communications based on monitored conditions.

The Examiner acknowledges that "[t]he group assignment being done dynamically for a session in response to a session request, and that (*sic*) the groups are associated with a service class during the session are missing from Yuasa," and cites Arora. The Arora patent is directed to a method and apparatus for dynamically forming emulated LANs for multimedia sessions. When a Multimedia Session Manager 401 at a client location initiates a session, an ELAN Configuration component 402 dynamically assigns IP addresses to the end-stations participating in the session. As with Yuasa, a switch does not dynamically assign hosts to a group. Rather, a central entity, in Arora the ELAN Configuration

Serial Number 09/873,454

component, performs coordination of the participants of a group. The central entity in Arora does create an ELAN for a particular multimedia session; however that ELAN is dynamically configured to provide a router-less path between the end-points, "configured to serve only the conferees of the multimedia session" (Col. 5, lines 31-40). The BUS allocated for the ELAN is created to serve "only those small number of LECs which are the participants of the multimedia session" (Col. 5, lines 24-26). Clearly there is not a teaching, or even a need under Arora, of priority handling or service classes, since only one session is being conducted on the relevant paths of the created ELAN. Arora does not teach or suggest service classes or any priority handling. Accordingly, Applicants respectfully assert that the Arora patent does not supply the teachings which are missing from the Yuasa patent.

Applicants further note that, since Yuasa expressly teaches the static assignment of groups based on common physical attributes or common logical attributes, it would not be logical to take the groups with common attributes and change the grouping (i.e., modify Yuasa with Arora) simply because one member of the group wants to communicate with selected other members of that or another group. Static groupings by common physical or logical attributes would not logically be altered using the Arora teachings of creating an emulated LAN in response to a request at the Multimedia Session Manager. Such re-grouping might result in Yuasa components being grouped with other components that do not share physical or logical attributes, which would render Yuasa unworkable for its intended usage. Clearly, therefore, such a combination would not occur to one having skill in the art.

The Examiner has cited the Aimoto patent in rejecting Claims 2, 12, 14-15 and 19-20, for the Aimoto teachings related to treatment of cells of a traffic class that does not have any special contract for transfer rates. According to Aimoto, if no

Serial Number 09/873,454

special contract exists, cells or packets can be selectively discarded to relieve traffic congestion. Aimoto makes a "discard" determination based on whether there is a contract for delivery of the cells/packets. Aimoto does not make a "discard" determination based on a service class guaranteed to a group. Since none of Yuasa, Arora, or Aimoto teaches dynamically assigning hosts to a group for a session, associating a service class to a group and handling communications based on that assigned service class, it cannot be maintained that the combination obviates the invention as claimed. "All words in a claim must be considered in judging the patentability of that claim against the prior art" (In re Wilson, 424 F. 2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970)). If the cited references fail to teach each and every one of the claim limitations, a *prima facie* case of obviousness has not been established by the Examiner.

Applicants request reconsideration of the Final status of the rejection. The Examiner stated that amendments necessitated the new grounds for rejection. Applicants' amendments were made to improve the readability of the claim language and not to distinguish over the art. Moreover, the claims had already recited groups and forwarding data for groups according to the group service class. The Examiner added one citation, to Col. 8, lines 30-36 which teaches changing the Yuasa virtual group assignments in response to changes in the physical plant. Making changes to static group assignments does not anticipate or obviate the session grouping and forwarding of data based on service classes for groups as claimed. Applicants assert that the Examiner did not respond to the presented arguments and simply slapped a "final" label on the previous office action because Applicants had attempted to clarify claim language. The Examiner clearly was not attempting to advance the prosecution of the application by issuing a final office action.